

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GEORGE G GARCIA
Claimant

SEDONA STAFFING INC
Employer

APPEAL 24A-UI-02310-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/16/23
Claimant: Respondent (4)**

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(2)a(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

On February 23, 2024, Sedona Staffing Inc (employer) filed an appeal from the statement of charges dated February 9, 2024 for the fourth quarter of 2023. A hearing was held on March 20, 2024, pursuant to due notice. George Garcia (claimant) did not participate. The employer did participate through Colleen McGuinty. The Department's Exhibits D1 - D4 were admitted into the record. Employer's Exhibit A consisting of 12 pages was admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

- I. Was the employer's protest timely?
- II. Was the employer's appeal from the statement of charges timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant last worked for the employer on December 10, 2022 as a laborer. Claimant separated from employment on December 10, 2022. Claimant filed a claim for benefits effective April 16, 2023. Claimant last worked for this employer December 10, 2022. He separated from this employer on December 10, 2022. The claimant filed the claim for unemployment insurance benefits effective April 16, 2023, and the weekly benefit amount is \$534. The administrative record shows that after the separation, but before filing for unemployment, the claimant earned more than \$5,340.00, or ten times the weekly benefit amount, in insured wages.

The notice of claim was mailed to the employer's address of record on April 21, 2023. The employer did receive the notice. A response was due May 1, 2023. The employer did submit a protest via fax on April 25, 2023. The employer received confirmation that its fax was transmitted. IWD did receive the employer's protest. The employer's first notice they were being charged for claimant's benefits was the receipt of the statement of charges mailed November 9, 2023 for the third quarter of 2023. The employer did appeal the statement of charges. In Appeal Number 23A-UI-11361-PT-T, the employer was found to have timely

appealed the Statement of Charges mailed on November 9, 2023 and to have timely protested the Notice of Claim mailed on April 21, 2023. The decision remanded the issue of whether the claimant's separation on December 10, 2022 qualified him for unemployment benefits. The decision affirmed the statement of charges pending the outcome of the remanded issue. A decision was mailed to the employer on January 3, 2024 (reference 07) stating the employer was relieved of charges because the claimant had earned ten times his income since separation and before filing a claim for benefits. Employer then received the statement of charges dated February 9, 2024, for the fourth quarter of 2023 charging the employer \$2,060.39. The employer filed its appeal of that statement of charges on February 22, 2024.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the administrative law finds the employer timely protested the notice of claim and has timely appealed the statement of charges. The administrative law judge further finds the claimant has requalified for benefits by earning ten times the weekly benefit amount in insured wages following the separation from this employer.

Iowa Code section 96.6(2) provides, in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Iowa Code section 96.7(2)a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing. [Emphasis added.]

Iowa Admin. Code r. 871-26.4 provides, in relevant part:

2. An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp after the decision was mailed to the party at its last-known address and shall state the following:

- a. The name, address and social security number of the claimant;
- b. A reference to the decision from which appeal is taken; and,
- c. The grounds upon which the appeal is based.

3. Notwithstanding the provisions of subrule 26.4(2), a contributory employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's

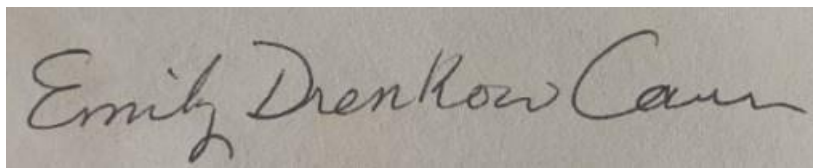
eligibility to receive benefits within 30 days from the mailing date of the quarterly statement of benefit charges.

4. Also notwithstanding the provisions of subrule 26.4(2), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 15 days of the mailing date of the quarterly billing of benefit charges.

The administrative law judge concludes that the employer timely protested the claim. Iowa Workforce Development issued a decision that the claimant had requalified for benefits after earning ten times his weekly benefit amount since separating from employment and the employer would not be charged for the benefits. The employer's first notice they were being charged for claimant's benefits was the Statement of Charges for the third quarter of 2023 mailed November 9, 2023. The employer appealed the Statement of Charges mailed November 9, 2023. In Appeal Number 23A-UI-11361-PT-T, the employer's appeal of the Statement of Charges and the employer's protest of the Notice of Claim was found to be timely. The employer received the fourth Statement of Charges for the fourth quarter of 2023 mailed on February 9, 2024 charging the employer for claimant's benefits. The employer appealed that decision on February 23, 2024. The employer's appeal was timely. Claimant has requalified for benefits since the separation from this employer by earning ten times the weekly benefit amount in insured wages following the separation. See Iowa Code §§ 96.5(1)g and 96.5(2)a. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The February 9, 2024, statement of charges for the fourth quarter of 2023 is modified in favor of the appellant, which will appear as a credit in the amount of \$2,060.39 to the employer's account on a future statement of charges. The employer has filed a timely protest and appeal from that statement of charges. The claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged and a credit shall be issued on a future statement of charges.

A handwritten signature in dark ink on a light-colored background. The signature is cursive and reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge

March 25, 2024
Decision Dated and Mailed

ed/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.